

STATE OF ARKANSAS SECURITIES DEPARTMENT

IN THE MATTER OF

ALPHA TELCOM, INC.;
AMERICAN TELECOMMUNICATIONS COMPANY, INC.;
SPA MARKETING, LLC; FLORIDA UNDERWRITING CO., INC.;
PAUL S. RUBERA; MARK E. KENNISON;
REINHOLD FRANK DUDECK, III; LARRY D. NEEL;
KENNETH MICHAEL WILLIAMS; LARRY RAY ROGERS;
ISAAC HAL MILLSAP, III; BILLIE E. PORTER and
DOUGLAS KEIGLEY

No. 01-36-S

CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (the Staff) has received information in an ongoing investigation that indicates that ALPHA TELCOM, INC.; AMERICAN TELECOMMUNICATIONS COMPANY, INC.; SPA MARKETING, LLC; FLORIDA UNDERWRITING COMPANY, INC.; PAUL S. RUBERA; MARK E. KENNISON; REINHOLD FRANK DUDECK, III; LARRY D. NEEL; KENNETH MICHAEL WILLIAMS; LARRY RAY ROGERS; ISAAC HAL MILLSAP, III; BILLIE E. PORTER and DOUGLAS KEIGLEY, have violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 1994).

FINDINGS OF FACT

1. Alpha Telcom, Inc. (Alpha) is an Oregon corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.
2. American Telecommunications Company, Inc. (ATC) is a Nevada corporation formed as a wholly owned subsidiary of Alpha on 17 September 1998. Originally named ATC, Inc., its name was changed to American Telecommunications Company, Inc. sometime in the first half of 2000. Its address was the same as Alpha's, but was later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, and 2900 Vine Street, Suite J, Grants Pass, Oregon 97526, but now seems to be 942 S.W. 6th Street, Suite G, Grants Pass, Oregon 97526.

3. SPA Marketing, LLC, (SPA) is a Nevada limited liability company located at 1200 Washington Road, Suite 203, Washington, Pennsylvania 15301.
4. Florida Underwriting Co. (Florida) is a Florida corporation with a last known business address of 16956 McGregor Blvd., Suite 3, Ft. Myers, Florida 33908.
5. Paul S. Rubera is the president and control person of Alpha and the control person of ATC.
6. Mark E. Kennison is an owner and/or a control person of SPA.
7. Reinhold Frank Dudeck, III, Larry D. Neel, Kenneth Michael Williams, Larry Ray Rogers, Isaac Hal Millsap, III, Billie E. Porter and Douglas Keigley all sold investment contracts in Alpha in the form of payphones and agreements for the operation of payphones throughout the United States to residents of Arkansas. They will be referred to collectively as the Salesmen. All of these respondents are residents of Arkansas except for Porter, who is a resident of Missouri. Except for Keigley and Porter, all of them had contracts with SPA to sell investments in Alpha. Keigley had a contract to sell these investment contracts with Florida, and Porter had a contract to sell these investment contracts through another entity.
8. Alpha sells pay telephones with telephone service agreements in which the investor shares in the profits of the pay telephone. The telephones were presented to potential investors along with 4 options in the way of service contracts, each varying in the amount of service provided. The 4 options varied from Level 1, which included a minimum of service, to Level 4, which provided full service to the purchaser, including choosing a site and installing the telephone, collecting all revenue from the telephone's operation, repairing the telephone when necessary and even repurchasing or buying back the telephone at the investor's option. Under Level 4, Alpha would split the net proceeds after expenses with the investor on a 70/30 basis, Alpha retaining 70% and the investor being paid 30%. All 4 options cost the same \$5,000, and the Salesmen sold

only investment contracts under Level 4. A “typical return” on each payphone was touted as 14% per year. In practice, all purchasers received \$58.34 per month per pay telephone purchased, which was exactly 14% per annum.

9. Prospective investors were told that their investments were insured. The insurer named varied. Mentioned most often was the Northern and Western Insurance Company of Grand Turk, Turks and Caicos Islands, British West Indies. Also mentioned was Lloyd’s of London and four other insurance companies listed as re-insurers. The Northern and Western Insurance Company was a captive insurance company wholly owned by Rubera and Robert S. Harrison of Richmond, Texas. As far as the Staff has been able to ascertain, it is not authorized to write insurance in Arkansas or any other state. In a letter dated 15 August 2001 addressed to Robert McDonald, the putative president of ATC, Harrison stated that, “There is not now, nor was there ever any insurance coverage for Alpha Telcom, Inc.” Although the reasons given for this statement in the letter are not entirely clear, it is clear that there is now no sinking fund upon which to draw to insure the investments made in Alpha and if there was ever a sinking fund in existence, it was never large enough to cover the possible draws that could taken from it.
10. Alpha was presented to prospective customers as a stable, profitable and innovative company that had been in business since 1985. Alpha was said to be selling and providing a “turn-key” operation.
11. ATC was organized by Rubera and operated in conjunction with and as an alter ego of Alpha. The two companies are controlled by Rubera, and there is in reality no real difference between the two companies.
12. ATC is presented to the public as the sales organization for Alpha. SPA has contracted with Alpha and/or ATC to serve as a sales organization and has recruited a network of entities and sales agents throughout the country. Florida is one such entity, and the

Salesmen are sales agents recruited by or for SPA to market investments in Alpha as set forth above. Sales agents were paid commissions of 15 %, 18% or 19% per telephone sold, and SPA was paid 10% of each purchase.

13. Pursuant to this commission schedule, the Salesmen sold the following investments to Arkansas residents. Even though the Staff has not been able to verify these figures, they are based on the normal commission rate allowed by SPA of 15%, except in the case of Williams, who received commissions of 18% and 19% and are believed to be accurate:

- a) Neel sold 15 Arkansas residents \$384,000 of Alpha investments for commissions of \$57,600 from April, 1999 to June, 2001;
- b) Millsap sold 1 Arkansas resident \$365,000 of Alpha investments for commissions of \$54,750 in June, 2000;
- c) Dudeck sold 12 Arkansas residents \$295,000 of Alpha investments for commissions of \$44,250 from September, 1999 to February, 2001;
- d) Williams sold 14 Arkansas residents \$245,000 of Alpha investments for commissions of \$45,950 during the year, 2000;
- e) Rogers sold 1 Arkansas resident \$80,000 of Alpha investments for commissions of \$12,000 in January, 2000;
- f) Leon Adelbert Szamocki, the subject of Cease and Desist Order No. 01-2-S, issued by the Arkansas Securities Commissioner on 10 January 2001, sold \$45,000 of Alpha investments to 4 Arkansas residents for commissions of \$6,750 from November, 1999 to December, 2000;
- g) Keigley sold \$10,000 of Alpha investments to 1 Arkansas resident for commissions of \$1,500 in November, 1999; and
- h) Porter sold \$5,000 of Alpha investments to 1 Arkansas resident for a commission of \$750 in March, 1999.

14. Alpha Telcom has a long regulatory history in which several state securities regulators have found that these purchases of pay telephones and accompanying service contracts were unregistered securities in the form of investment contracts that were sold by unregistered persons and/or entities and ordered Alpha Telcom and those working with it

to cease and desist. Sometime in 2000, these orders were revealed to prospective investors, but before that time they were not revealed. The vast majority of Arkansas investors were not aware of these orders. The orders that could have been revealed are the following:

- a) *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06; Pennsylvania Securities Commission; Cease and Desist Order; issued 2 February 1999.
- b) *In the Matter of the North Carolina Securities Division v. ATC, Inc., Paul Rubera, et al*, No. 99-038-CC; North Carolina Secretary of State; Cease and Desist Order; issued 17 November 1999.
- c) *In the Matter of Alpha Telcom, Inc.*, No. 9900201; Illinois Secretary of State; Temporary Order of Prohibition issued 30 June 1999; Consent Order of Prohibition issued 14 January 2000, Alpha agreeing to offer rescission to all Illinois purchasers.
- d) *In the Matter of Alpha Telcom, Inc. and Paul S. Rubera, et al.*, No. S-99225(EX); Wisconsin Department of Financial Institutions; Cease and Desist Order issued 24 November 1999.
- e) *In the Matter of Alpha Telcom, Inc. and ATC, Inc.*; Rhode Island Department of Business Regulation; Temporary Cease and Desist Order issued 7 March 2000.
- f) *Department of Banking and Finance, Department of Investigations v. Alpha Telcom, Inc., ATC, Inc. and Paul Rubera*; Florida; Complaint seeking cease and desist order and administrative fines; set for trial later this month.
- g) California Department of Corporations, Desist and Refrain Order issued 24 October 2000.

In addition, Porter was named a respondent in a cease and desist order issued in June, 1994 by the Arkansas Securities Commission, *In the Matter of First Boston Acceptance Corporation, et al.*, No. 94-33-S, which was not revealed to the purchaser of this security.

15. Among actions that have proceeded against Alpha most recently is the final cease and desist order issued by the Ohio Commissioner of Securities against Alpha and others on 26 July 2001, the temporary restraining order issued by the United States District Court for the District of Oregon at the request of the United States Securities and Exchange

Commission (SEC) and the filing by Alpha of a bankruptcy action in Florida. The SEC's complaint alleged that the business engaged in by Alpha and its affiliates was a Ponzi-like scheme that never generated enough income to pay expenses, and the money paid to existing investors always came from sales to new investors. Finding that there was a probability of success in proving these allegations, the Oregon federal district court issued a temporary restraining order freezing all of the Alpha's assets, including 34 bank account located across the country. Several days before the temporary restraining order was issued on 27 August 2001, Alpha sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code.

16. Monthly payments to investors ceased after the June payment.

CONCLUSIONS OF LAW

17. Ark. Code Ann. § 23-42-102(15)(A)(xi) (Supp. 1999) in pertinent part defines a security as an investment contract.
18. Ark. Code Ann. § 23-42-501 (Repl. 1994) provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act.
19. Ark. Code Ann. § 23-42-301(a) (Repl. 1994) prohibits as unlawful the transaction of business as a broker-dealer or agent by any person who is not registered with the Arkansas Securities Department as such.
20. Ark. Code Ann. § 23-42-102(2)(A) (Supp. 1999) defines agent as, *inter alia*, an individual representing the issuer of securities and effecting or attempting to effect purchases or sales of those securities.
21. Ark. Code Ann. § 23-42-102(9) (Supp. 1999) defines issuer as any person, which is defined in Ark. Code Ann. § 23-42-102(11) (Supp. 1999) to include an individual (natural person), corporation, limited liability company or association, who issues or proposes to issue any security.

22. Ark. Code Ann. § 23-42-507(2) (Repl. 1994) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made.

OPINION

23. If it is assumed, *arguendo*, that the investments in Alpha were as they were represented to be by the Salesmen, as directed by Alpha through its sales organizations, ATC, SPA, Florida and perhaps another, the following is true of these investments: 1) the investors would and could play only a passive role and not be involved in the day-to-day operations of the enterprise into which they had invested; 2) the investors had no expertise or experience in operating pay telephones and were dependent on Alpha and ATC to manage and operate the pay telephones; and 3) because there was no limit on the number of investors nationwide, there were too many investors for any individual investors to have any meaningful input into the management of these investments. It is clear that the investors in Alpha were involved in a common enterprise with the expectation of profits to be produced only from the managerial efforts of others. Hence, the sale of the pay telephones together with service contracts— and particularly the Level 4 service contract providing a “turn key operation” – was the sale of investment contracts as defined at Ark. Code Ann. § 23-42-102(15)(A)(xi) (Supp. 1999).
24. All of the respondents offered to sell these investment contracts either through agents or as agents without prior registration of the investment contracts in violation of Ark. Code Ann. § 23-42-501 (Repl. 1994).
25. SPA, Florida and the Salesmen all offered to sell securities without being registered with the Arkansas Securities Department as a broker-dealer, agent of a broker-dealer or agent of the issuer in violation of Ark. Code Ann. § 23-42-301(a) (Repl. 1994).

26. The failure to tell prospective purchasers about the pertinent regulatory history set forth in ¶ 14, *supra*, was the omission of material information in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 1994).
27. Statements to prospective purchasers that their investment would be covered by insurance when in fact insurance coverage of these investments was illusory at best were material misstatements of fact and untrue statements made in connection with the offer or sale of a security in violation of Ark. Code Ann. § 23-42-507

ORDER

IT IS THEREFORE ORDERED that ALPHA TELCOM, INC.; AMERICAN TELECOMMUNICATIONS COMPANY, INC.; SPA MARKETING, LLC; FLORIDA UNDERWRITING COMPANY, INC.; PAUL S. RUBERA; MARK E. KENNISON; REINHOLD FRANK DUDECK, III; LARRY D. NEEL; KENNETH MICHAEL WILLIAMS; LARRY RAY ROGERS; ISAAC HAL MILLSAP, III; BILLIE E. PORTER and DOUGLAS KEIGLEY as well as others whose identities are not yet known who are in positions of control of ALPHA TELCOM, INC.; AMERICAN TELECOMMUNICATIONS COMPANY, INC.; SPA MARKETING, LLC; or FLORIDA UNDERWRITING COMPANY, INC., and who are employed by or otherwise affiliated with ALPHA TELCOM, INC.; AMERICAN TELECOMMUNICATIONS COMPANY, INC.; SPA MARKETING, LLC; or FLORIDA UNDERWRITING COMPANY, INC., directly or through other companies **CEASE AND DESIST** from any further actions in the state of Arkansas in connection with the offer or sale of the securities described above and any other securities until such time as the securities are properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act and the persons offering them for sale are properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act.

WITNESS MY HAND AND SEAL this 5th day of September, 2001.

A handwritten signature in cursive script, appearing to read "Mac Dodson", written in black ink.

MAC DODSON
SECURITIES COMMISSIONER